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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

APR 3 1998

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Compliance With Applicable Voluntary)
Band Plans in the Amateur Radio Service)

RM-9259

To: The Chief, Private Wireless Division
Wireless Telecommunications Bureau

REQUEST FOR DECLARATORY RULING

**THE AMERICAN RADIO RELAY LEAGUE,
INCORPORATED**

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SUMMARY

The American Radio Relay League, Incorporated, (the "League") the national association of amateur radio operators, requests that the Commission issue a Declaratory Ruling at an early date clarifying that "good amateur practice" as contemplated by 47 C.F.R. §97.101(a) entails compliance with the voluntary band plans adopted and amended from time to time through the cooperative efforts of amateur radio operators across the country, and around the world. Specifically, the League requests that the Commission confirm, as did its former Chief, Private Radio Bureau, in 1983, that, in accordance with Section 97.101(a) of the Commission's Rules, (1) Amateur operators should be familiar with, and should abide by, the voluntary band plans that are applicable to the frequency bands in which they operate; and (2) due to the widespread acceptance of those band plans, any amateur who selects a station transmitting frequency not in harmony with those plans is not operating in accord with good amateur practice.

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REQUEST FOR DECLARATORY RULING

The American Radio Relay League, Incorporated, (the "League") the national association of amateur radio operators, by counsel and pursuant to 47 C.F.R. §§ 1.2 and 1.41, hereby respectfully requests that the Commission issue a Declaratory Ruling at an early date clarifying that "good amateur practice" as contemplated by 47 C.F.R. §97.101(a) entails compliance with the voluntary band plans adopted and amended from time to time through the cooperative efforts of amateur radio operators across the country, and, indeed, around the world. Specifically, the League requests that the Commission confirm, as did its former Chief, Private Radio Bureau, in 1983, that, in accordance with Section 97.101(a) of the Commission's Rules, (1) Amateur operators should be familiar with, and should abide by, the voluntary band plans that are applicable to the frequency bands in which they operate; and (2) due to the widespread acceptance of those band plans, any amateur who selects a station transmitting frequency not in harmony with those plans is not operating in accord with good amateur practice. In support of its request, the League states as follows:

BACKGROUND

1. The fundamental canons of the Amateur Radio Service since its inception have included the private, non-commercial use of radio to extend goodwill in the international community, a dedication to serving the public, especially in times of emergency, and the promotion of the radio art. The unofficial "Amateur Creed" establishing these ethics has long been echoed in language which has remained essentially unchanged since it was introduced in the first post-war rewrite of the Commission's rules in 1946:

In all respects not specifically covered by FCC Rules each amateur station must be operated in accordance with good engineering and good amateur practice.

47 C.F.R. §97.101(a). While necessarily couched in general terms, this residual rule perfectly complements the more than 20,000 words elsewhere in Part 97 which define the specifics of the Amateur Radio Service. It provides that amateur operators must comply not only with the letter of the Rules, but with the self-regulatory characteristics of Amateur Radio as well.

2. Because the amateur bands are, by nature, shared bands — not only locally or even nationally, but as well with amateur operators throughout the world, the question of defining "good amateur practice" is not merely an academic exercise. Although the minutiae of amateur operations can not, and should not, be subject to explicit regulation, being after all an experimental radio service, the practicalities of sharing a significantly limited resource with long-distance propagation characteristics necessitates a certain level of cooperation among users in order to ensure fair and effective availability of the resource to all.

3. There are numerous circumstances in the Amateur Radio Service in which even strict compliance with Part 97 does not guarantee good operating practice by licensees — or the absence of interference between and among amateur stations. This is both as it should be, and

as it must be: the Commission has always minimized regulation of the Amateur Service, in order to encourage and promote its experimental character. Utilization of many different operating modes, on shared frequencies, is facilitated by rules which only nominally regulate emission types and frequency band segments. The varied nature of amateur communications and experimentation necessitates a regulatory flexibility in the Rules. Compatible sharing of limited frequency bands among amateur licensees, on the other hand, is the order of the day, and the Commission has repeatedly noted that such cooperation must continue.¹

4. Much of the order and efficiency found in the Amateur Service, therefore, is due not to the Commission's Rules (and case decisions), which create the framework of the Service, but as well to the self-regulatory efforts of the licensees themselves, individually and in groups, for which the Amateur Service has a proud and continuing tradition.² The latter (band plans being principal among those efforts) provide the substance to the regulatory framework provided by the Commission in the Part 97 Rules. Given the substantial growth of the Amateur Service over time, and the increasing use of the MF, HF, VHF, UHF, and microwave allocations, the focus of the Amateur Service has properly been on the development of voluntary band plans for the cooperative sharing of the limited allocations in the Amateur Service, and the accommodation of all types of communications interests. Such is necessary to minimize inter-mode, geographic,

¹ Section 97.101(b) of the Rules requires the cooperation of each station licensee and each control operator in the selection of transmitting "channels" and in making the most effective use of any station. This is obviously the concept behind the voluntary band plans developed in the Amateur Community: to provide a widely-recognized basis for cooperation in the selection of operating frequencies in shared bands, using widely varied emission modes.

² The Commission has stated, with respect to its deregulatory philosophy: "we continue to believe that deregulation is a sound idea. ... [A]mateurs should be in the forefront of technical advancement, and ... any attempt by the Commission to spur amateur experimentation will necessarily increase amateur responsibility". *Deregulation of Part 97 of the Commission's Rules regarding emissions authorized in the Amateur Radio Service*, 68 FCC.2d 1287, 1288 (1978).

and co-channel and adjacent channel same-mode conflicts. The Commission has relied on this voluntary band planning effort as the proper substitute for more detailed regulation of the Amateur Service. It has also monitored the development and success of voluntary band plans as spectrum management tools.³

5. Band planning is not a novel concept; it has long been used as a means to accommodate the disparate needs of individual users and clubs while minimizing interference to others. It is accomplished through a process in which representatives of all parties interested in using particular frequency bands for particular purposes coordinate those interests in a fair and open manner. The band planning effort is done at multiple, discrete levels, and, candidly, with varying degrees of success. The method, however, allows consideration of wide differences in propagation, international allocations, variations in emission mode preferences, and regional and local geographical issues. There are band plans adopted internationally by the International Amateur Radio Union ("IARU"), the international body of national amateur radio societies around the world; there are national band plans adopted by the League, largely by consensus of

³ For example, in a proceeding dealing with regulation of complex system operation and expansion of repeater subbands, the Commission inquired about the sufficiency of amateur voluntary band planning efforts. It found, following notice and comment thereon, as follows:

In response to our inquiries concerning the adequacy of the current system of voluntary spectrum management and the necessity for the limitations on the effective radiated power of stations in repeater operation ..., we received many informative and helpful responses. These comments indicated, generally, a widespread dissatisfaction with the ERP limitations on repeater operation, as well as a belief that the Amateur Service's voluntary spectrum management system functions with considerable effectiveness in most instances.

Deregulation of Part 97 of the Commission's Rules to simplify the licensing and operation of complex systems of stations and modify repeater subbands in the Amateur Radio Service, 66 FCC.2d 207, 211-12 (1977).

groups of users with interests in particular emission modes (and essentially consistent with the IARU band plans); and regional and local band plans, principally for the VHF, UHF, and microwave bands, which incorporate necessary variations from the national band plans due to usage levels, unique geographic conditions, and the like. The national band plans have received the most attention from the Commission, because they provide a national standard which, for the most part, is adhered to by the amateur community.

6. This multi-tiered approach to band planning is essential to deal with issues ranging from international concern to local repeaters. In the HF bands, and in some segments of the VHF and higher bands, band planning has to be an international process because signals propagate internationally, either directly or via satellites. Such band planning, of necessity, must be handled by the IARU, where the League serves as the representative of amateurs in the United States. International Amateur Radio band plans are adhered to domestically on a voluntary basis. In other segments of the VHF and higher bands, and especially in the repeater subbands, local needs can be met more efficiently if allowance is made for variations from national plans. The League has long recognized that compliance with regional band plans developed by recognized coordination bodies (which may well conflict with national band plans) is required as an essential element of "good amateur practice" in the regions in which those band plans apply.

ARGUMENT

7. Over the past decade, the Commission has wisely and cautiously followed a path of deregulation in most, if not all, of its various services. With particular respect to the Amateur Service, in which advancement of the radio art can only occur in an atmosphere conducive to experimentation, and where there is a tradition of self-regulation, this trend is welcomed. As

noted above, rigid enforcement of band plans is neither warranted nor feasible. Nevertheless, as more users attempt to operate in increasingly crowded spectrum, it becomes ever more important for the Commission to define minimal standards of "good amateur practice" in order to prevent interference by rogue operators. A Declaratory Ruling providing a clear statement of support for voluntary, accepted band plans will serve the dual purpose of highlighting the importance of band plans in the amateur community, and setting a standard of cooperative behavior which is expected of licensees. Furthermore, a Declaratory Ruling (as opposed to a formal change in the Commission's Rules) would provide sufficient flexibility for informal, cooperative resolution of interference problems without resort to the Commission.

8. There is ample precedent for the issuance of a Declaratory Ruling defining (at least by example) "good amateur practice" as entailing compliance with applicable band plans. When the Commission originally authorized the use of repeaters, control stations, and auxiliary link stations, it amended its rules to ensure that the stations would not disrupt other uses:

To minimize the prospect of interference to radiocommunication already in progress on a given frequency, the rules to require continuous monitoring of a remotely controlled transmitter are expanded to require continuous monitoring of the frequencies while in operation, which is good operating practice.

Amendment of Part 97 of the Commission's Rules Concerning the Licensing and Operation of Repeater Stations in the Amateur Radio Service, Report and Order, 37 FCC.2d 225, 231 ¶19 (1972) (underlining added).

9. In denying reconsideration of that ruling, the Commission reiterated:

Good amateur practice requires that [the operator] monitor his selected frequency prior to transmitting, in order to insure that the transmission will not interfere with radiocommunications already in progress on that frequency.

* * *

Good amateur practice also requires the control operator of a repeater station to monitor the input receiving frequency prior to activating the repeater transmitter.

Memorandum Opinion and Order, 38 FCC.2d 920, 922 ¶¶ 9-10 (1973) (underlining added).

Although the specific rule provisions incorporating these requirements have since been amended,⁴ the requirement to minimize harmful interference on shared frequencies is still very much a part of the Commission's regulatory scheme.

10. In a letter from the Chief of what was then the Private Radio Bureau (now the Wireless Telecommunications Bureau) to the President of the Tri-State Amateur Repeater Council, dated April 27, 1983, dealing with a dispute in repeater station configuration, the Chief stated:

The Commission's fundamental policy in this matter [repeater frequency coordination] was stated in the Report and Order in Docket 18803 [regarding repeater stations in the Amateur Radio Service]:

The Commission is persuaded by the comments and by observation that regional and national frequency planning and coordination by amateur radio operators themselves can result in the best spectrum utilization appropriate to the service.

The only national planning for Amateur Radio Service frequencies that has come to our attention is that done by the American Radio Relay League. The 1982-83 edition of the ARRL Repeater Directory lists over 5,600 stations in repeater operation all over the United States and Canada. In view of this widespread acceptance of their band plans, we conclude that *any amateur who selects a station transmitting frequency not in harmony with those plans is not operating in accord with good amateur practice.*

⁴ Cf. *Reorganization and Deregulation of Part 97 of the Rules Governing the Amateur Radio Services*, Notice of Proposed Rule Making, 3 FCC Rcd 2076, 2080 ¶45 (1988); Report and Order, 4 FCC Rcd 4719 (1989).

(italics added).

11. Notwithstanding its interpretation of "good amateur practice" as including compliance with recognized national band plans, the Commission has declined to incorporate specific private sector band plans in its rules. In a rulemaking proceeding involving repeater coordination, the Commission stated as follows:

Uniform Band Plans. Seven commenters favored nationally uniform band plans to facilitate coordination. Two opposed them. We will not adopt rules to formulate national band plans or to require them. As a general proposition, we favor voluntary band plans over Commission-imposed subbands in the Amateur Service. Rule-mandated band plans may result in inflexibility, increased enforcement burdens and greater regulatory burdens.

Amendment of Part 97 of the Commission's Rules Concerning Frequency Coordination of Repeaters in the Amateur Radio Service, Report and Order, 60 RR.2d 204, 209 ¶27 (1986) (citations omitted); *affirmed*, Memorandum Opinion and Order, 2 FCC Rcd. 243 (1987).

12. While the Commission has properly declined to incorporate the substance of national amateur radio band plans in its Rules, it has consistently supported the voluntary band plans as an inherent element of "good amateur practice". Because that term, as it is utilized in Section 97.101(a) of the Commission's Rules, is properly applied to adherence to voluntary, accepted band plans, and because non-compliance with accepted band plans which causes interference to one or more amateur stations that is or are operating in accordance with those accepted band plans cannot be considered good amateur practice under any circumstances, the League requests that the Commission issue a Declaratory Ruling which expressly determines that compliance with generally accepted, regional and national voluntary band plans is an indisputable element of "good amateur practice".

13. By classifying adherence to generally accepted band plans as "good amateur

practice", the Commission need not involve itself with the details of the band plans, or the planning process. The plans are, by nature, a function of the evolving needs of the amateur community and changes in technology and must be modified periodically in order to remain useful.

14. The Commission has become involved in certain enforcement proceedings and determined that there were rule violations where, for example, amateur stations intentionally transmitted on repeater input frequencies, allegedly conducting "telegraphy practice" or other amateur communications on a simplex basis, with knowledge that such transmissions would inevitably cause interference to the repeater users, or those who would utilize the repeater, potentially for emergency communications. In those cases, the Commission determined that transmissions on repeater input frequencies not in accordance with accepted amateur band plans, is evidence of malicious interference, in violation of Section 97.101(d) of the Commission's Rules. *See, e.g., Dale L. Smith*, NAL Acct. No. 215AL0006, released August 19, 1992; *Henry C. Armstrong, III*, 92 FCC.2d 485 (Rev. Bd. 1983). Malicious interference is the most serious violation in the Amateur Service, warranting the most stringent penalty. *Harold R. Claypoole*, 95 FCC.2d 331, 335 (1983); *Kenneth Gilbert*, 92 FCC.2d 126 (Rev. Bd. 1982). Citation of amateur band plans as constituting good operating practice and urging compliance therewith would assist in determining standards for the malice component in a malicious interference case.

15. The recognition of operation in accordance with international, national and regional/local band plans as a component of "good amateur practice" is also a component of Section 97.101(b), which requires that "[e]ach station licensee and each control operator must cooperate in selecting transmitting channels and in making the most effective use of the amateur service frequencies. No frequency will be assigned for the exclusive use of any station." The

cooperation in the selection of transmitting channels should be based, first, on the Commission's rules, and second, on the band plans recognized throughout the amateur community, and which are normally published and available to all radio amateurs. (See the "Considerate Operator's Frequency Guide" on the inside cover of the *Ham Desktop Reference*, an insert to the *ARRL Operating Manual*, 6th Edition; *The ARRL Repeater Directory*™; *The FCC Rule Book*; and, for frequencies related to packet radio using the AX.25 packet protocol, *QST Magazine*, September 1987, Page 54, and March, 1988, Page 51). There are local variations on these national band plans, and the League has specifically supported those. The current *ARRL Repeater Directory*™, at page 36, states that:

The ARRL supports regional frequency coordination efforts by amateur groups. Band plans published in the ARRL Repeater Directory are recommendations based on a consensus as to good amateur operating practice on a nationwide basis. In some cases, however, local conditions may dictate a variation from the national band plan. In these cases, the written determination of the regional frequency coordinating body shall prevail and be considered good amateur operating practice in that region.

16. A committee of the League's Board of Directors has recently reviewed the level of voluntary compliance with band plans in various amateur allocations, including MF and HF bands, and has concluded that there has been some notable deterioration in adherence to the plans. The League suggests that a recognition of band plans, and a Commission admonition to adhere to them, would promote greater awareness of and compliance with those band plans without changing their nature. Nor would it reduce the flexibility of the Commission's rules whatsoever. The League is not asking for a rule that would carve the band plans in stone, or to incorporate them by reference in the rules. It simply seeks the identification of generally accepted, voluntary band plans in the Amateur Service in the rules as an integral component of

"good amateur practice". Repeater coordination is of the same nature; it is voluntary, but it has been described by the Commission as a necessary element of shared frequency operation by fixed stations in the Amateur Service. It is the "minimum joint effort by the amateur community" to facilitate shared frequency operation of repeaters. Voluntary adherence to accepted band plans is no different, and deserves the same recognition to promote voluntary compliance.

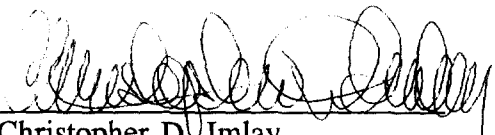
Therefore, the foregoing considered, the American Radio Relay League, Incorporated, respectfully requests that the Commission issue, at an early date, a Declaratory Ruling stating that "good amateur practice" anticipates compliance with the accepted voluntary international, national, and regional band plans adopted by cooperation and coordination among individuals and licensees in the Amateur Radio Service.

Respectfully submitted,

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